

1 JOHN K. VINCENT  
United States Attorney  
2 CHRISTOPHER P. SONDERBY  
MICHAEL J. MALECEK  
3 Assistant U.S. Attorneys  
501 I Street, Suite 10-100  
4 Sacramento, California 95814  
Telephone: (916) 554-2827  
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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, )  
11 ) CR-S-01-0105 LKK  
Plaintiff, )  
12 ) PLEA AGREEMENT OF SCOTT BEACH  
v. )  
13 )  
KENNETH FETTERMAN, et al., )  
14 )  
Defendants. )  
15 \_\_\_\_\_ )

16 I. INTRODUCTION

17 A. Scope of Agreement: The Indictment in this case charges  
18 defendant Scott Beach ("defendant") with one count of wire fraud and  
19 three counts of mail fraud in violation of 18 U.S.C. §§ 1341 and  
20 1343. This document contains the complete Plea Agreement between  
21 the United States Attorney's Offices for the Eastern District of  
22 California and the District of Colorado (the "government") and the  
23 defendant regarding this case. This Plea Agreement is limited to  
24 the United States Attorney's Offices for the Eastern District of  
25 California and the District of Colorado and cannot bind any other  
26 federal, state, or local prosecuting, administrative, or regulatory  
27 authorities.

28 / / /

**B. Court Not A Party:** The Court is not a party to this Plea Agreement. Sentencing is a matter solely within the Court's discretion; the Court is under no obligation to accept any recommendations made by the government and may in its discretion impose any sentence it deems appropriate up to and including the statutory maximum stated in this Plea Agreement. If the Court should impose any sentence up to the maximum established by the statute, the defendant cannot, for that reason alone, withdraw his guilty plea, and he will remain bound to fulfill all of the obligations under this Agreement. The defendant understands that neither the prosecutor, defense counsel, nor the Court can make a binding prediction or promise regarding the sentence he will receive.

## II.

## DEFENDANT'S OBLIGATIONS

**A. Guilty Pleas:** The defendant shall plead guilty to Counts 1, 5, 6 and 10 of the Indictment. The defendant agrees that he is, in fact, guilty of these counts charged in the Indictment and that the facts set forth in the Factual Basis attached hereto as Exhibit A are accurate.

**B. Restitution:** The defendant agrees to pay full restitution to the victims of these offenses as determined by the Court. The defendant agrees that this restitution amount includes, but is not limited to, the following payments:

<u>Victim</u>	<u>Amount</u>	<u>Auction</u>
Josef Wolosz	\$ 4,520	"Califano"
Sonna Perlman	\$ 8,600	"Dutch Oil"
Kevin McCauley	\$10,050	"Backhuysen"

1           Mike States                   \$ 6,100                   "Utrillo"

2           Daniel Morris               \$10,400                  "Wendt"

3           **C. Special Assessment:** The defendant agrees to pay a special  
4 assessment of \$400 by delivering a check or money order payable to  
5 the United States District Court to the United States Probation  
6 Office immediately before the sentencing hearing. The defendant  
7 understands that this Plea Agreement is voidable by the government  
8 if he fails to pay the assessment prior to that hearing.

9           **D. Agreement to Cooperate:** The defendant agrees to cooperate  
10 fully with the government and any other federal, state, or local law  
11 enforcement agency, as directed by the government. As used in this  
12 Agreement, "cooperation" requires the defendant: (1) to respond  
13 truthfully and completely to all questions, whether in interviews,  
14 in correspondence, telephone conversations, before a grand jury, or  
15 at any trial or other court proceeding; (2) to attend all meetings,  
16 grand jury sessions, trials, and other proceedings at which the  
17 defendant's presence is requested by the government or compelled by  
18 subpoena or court order; (3) to produce voluntarily any and all  
19 documents, records, or other tangible evidence requested by the  
20 government; (4) not to participate in any criminal activity while  
21 cooperating with the government; (5) to disclose to the government  
22 the existence and status of all money, property, or assets, of any  
23 kind, derived from or acquired as a result of, or used to facilitate  
24 the commission of, the defendant's illegal activities or the illegal  
25 activities of any conspirators; and (6) prepare and file such tax  
26 returns and/or amended tax returns as the Internal Revenue Service  
27 (IRS) deems necessary and pay such back taxes as the IRS determines  
28 may be owed from such returns.

1        If the defendant commits any crimes or if any of the  
2        defendant's statements or testimony prove to be knowingly false,  
3        misleading, or materially incomplete, or if the defendant otherwise  
4        violates this Plea Agreement in any way, the government will no  
5        longer be bound by its representations to the defendant concerning  
6        the limits on criminal prosecution and sentencing as set forth  
7        herein. The determination whether the defendant has violated the  
8        Plea Agreement will be under a probable cause standard. If the  
9        defendant violates the Plea Agreement, he shall thereafter be  
10       subject to prosecution for any federal criminal violation of which  
11       the government has knowledge, including but not limited to perjury,  
12       false statements, and obstruction of justice. Because disclosures  
13       pursuant to this Agreement will constitute a waiver of the Fifth  
14       Amendment privilege against compulsory self-incrimination, any such  
15       prosecution may be premised on statements and/or information  
16       provided by the defendant. Moreover, any prosecutions that are not  
17       time-barred by the applicable statute of limitations as of the date  
18       of this Agreement may be commenced in accordance with this  
19       paragraph, notwithstanding the expiration of the statute of  
20       limitations between the signing of this Agreement and the  
21       commencement of any such prosecutions. The defendant agrees to  
22       waive all defenses based on the statute of limitations or delay of  
23       prosecution with respect to any prosecutions that are not time-  
24       barred as of the date of this Agreement.

25       If it is determined that the defendant has violated any  
26       provision of this Agreement or if the defendant successfully moves  
27       to withdraw his plea: (1) all statements made by the defendant to  
28       the government or other designated law enforcement agents, or any

1 testimony given by the defendant before a grand jury or other  
2 tribunal, whether before or after this Agreement, shall be  
3 admissible in evidence in any criminal, civil, or administrative  
4 proceedings hereafter brought against the defendant; and (2) the  
5 defendant shall assert no claim under the United States  
6 Constitution, any statute, Rule 11(e)(6) of the Federal Rules of  
7 Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or  
8 any other federal rule, that statements made by the defendant before  
9 or after this Agreement, or any leads derived therefrom, should be  
10 suppressed. By signing this Agreement, the defendant waives any and  
11 all rights in the foregoing respects.

12 **E. No Internet or On-line Auction Activity:** The defendant  
13 agrees not to participate, directly or indirectly, in any internet  
14 or on-line auctions from the date he signs this Plea Agreement until  
15 the termination of his term of supervised release by the Court.

### 16 **III.**

#### 17 **THE GOVERNMENT'S OBLIGATIONS**

18 **A. No Further Prosecution:** Except as to potential criminal  
19 tax violations (as to which the government can make no promises of  
20 non-prosecution), the government agrees not to further prosecute the  
21 defendant for the scheme charged in the Indictment.

22 **B. Incarceration Range:** The government will recommend that  
23 the defendant be sentenced to a sentence at the bottom of the  
24 applicable guideline range for his offenses as determined by the  
25 United States Probation Office.

26 **C. Reduction of Sentence for Cooperation:** The government  
27 agrees to recommend at the time of sentencing that the defendant's  
28 sentence be reduced to a term of as low as probation without

1 incarceration, if he provides substantial assistance to the  
2 government, pursuant to U.S.S.G. § 5K1.1.

3 The defendant understands that he must comply with paragraph  
4 II(D) of this Agreement to receive a government recommendation for  
5 any reduction in his sentence. The defendant understands that it is  
6 within the sole and exclusive discretion of the government to  
7 determine whether the defendant has provided substantial assistance.  
8 The defendant understands that the government may recommend no  
9 reduction in his sentence at all, depending upon the level of  
10 assistance the government determines that the defendant has  
11 provided. The defendant further understands that a motion pursuant  
12 to U.S.S.G. § 5K1.1 is only a recommendation and is not binding on  
13 the Court, that this Agreement confers no right upon the defendant  
14 to require that the government make a § 5K1.1 motion, and that this  
15 Agreement confers no remedy upon the defendant in the event that the  
16 government declines to make a § 5K1.1 motion. In particular, the  
17 defendant agrees not to try to file a motion to withdraw his plea  
18 based on the fact that the government decides not to recommend a  
19 sentence reduction or recommends a sentence reduction less than the  
20 defendant thinks is appropriate.

21 If the government determines that the defendant has provided  
22 further cooperation within one year following his sentencing, the  
23 government may move for a further reduction of his sentence pursuant  
24 to Rule 35 of the Federal Rules of Criminal Procedure.

25 **D. Acceptance of Responsibility:** If the United States  
26 Probation Office determines that a reduction in defendant's offense  
27 level for his full and clear demonstration of acceptance of  
28 responsibility is appropriate under U.S.S.G. § 3E1.1, the government

1 will stipulate to such a reduction.

2 **IV.**

3 **MAXIMUM SENTENCE**

4 **A. Maximum Penalty:** The maximum penalty the Court can impose  
5 on each count to which the defendant is agreeing to plead guilty is  
6 five years imprisonment, a \$250,000 fine, a three-year term of  
7 supervised release, and a mandatory special penalty assessment of  
8 \$100 upon conviction. In the event that defendant's supervised  
9 release is revoked, the Court may impose an additional sentence of  
10 up to two years imprisonment under 18 U.S.C. § 3583(e) (3).

11 **V.**

12 **ELEMENTS OF CHARGED CRIMES**

13 **A. Mail Fraud:** As to Counts 5, 6 and 10 of the Indictment,  
14 which charge mail fraud in violation of 18 U.S.C. § 1341, the  
15 government must prove each of the following elements beyond a  
16 reasonable doubt:

17 First, the defendant made up or participated in a scheme or  
18 plan for obtaining money or property by making false promises or  
19 statements;

20 Second, the defendant knew that the promises or statements were  
21 false;

22 Third, the promises or statements were material, that is they  
23 would reasonably influence a person to part with money or property;

24 Fourth, the defendant acted with the intent to defraud; and

25 Fifth, the defendant used, or caused to be used, the mails to  
26 carry out or attempt to carry out an essential part of the scheme.

27 **B. Wire Fraud:** As to Count 1 of the Indictment, which charges  
28 wire fraud in violation of 18 U.S.C. § 1343, the government must

1 prove beyond a reasonable doubt the first four elements identified  
2 above, in addition to the following:

3 Fifth, the defendant used, or caused to be used, a wire  
4 communication in interstate commerce to carry out or attempt to  
5 carry out an essential part of the scheme.

## 6 VI.

### 7 SENTENCING DETERMINATION

8 **A. Statutory Authority:** The defendant understands that the  
9 Court will determine a sentencing guideline range for his case under  
10 the Sentencing Reform Act of 1984 (18 U.S.C. §§ 3551-3742 and 28  
11 U.S.C. §§ 991-998). Defendant further understands that the Court  
12 will impose a sentence within that guideline range, unless it finds  
13 that there is a basis for departure (either above or below the  
14 range) because there exists an aggravating or mitigating  
15 circumstance of a kind, or to a degree, not adequately taken into  
16 consideration by the Sentencing Commission in formulating the  
17 guidelines.

18 **B. Stipulations Affecting Guidelines Calculation:** The  
19 government and the defendant agree that there is no material dispute  
20 as to the following sentencing guidelines variables and therefore  
21 stipulate to the following:

22 **1. Base Offense Level:** Pursuant to U.S.S.G. § 2F1.1(a),  
23 the parties agree that the base offense level is 6.

#### 24 **2. Specific Offense Characteristics:**

25 **a. Amount of Loss:** Based on the auctions that  
26 defendant hosted or participated in that involved the  
27 placement of fraudulent bids, a reasonable estimate of the  
28 intended loss from the offenses concerning defendant is



1 between \$200,000 and \$350,000. Based on an intended  
2 amount of loss of between \$200,000 and 350,000, the  
3 parties agree that the offense level should be increased  
4 by 8 levels pursuant to U.S.S.G. § 2F1.1(b)(1).

5 **b. More than Minimal Planning:** Because the scheme  
6 to defraud involved more than minimal planning, the  
7 parties agree that the offense level should be increased  
8 by 2 levels pursuant to U.S.S.G. § 2F1.1(b)(2).

9 **c. Sophisticated Means:** Because the offenses  
10 involved the creation of numerous aliases using false  
11 information and different e-mail providers, the parties  
12 agree that the offense level should be increased by 2  
13 levels pursuant to U.S.S.G. § 2F1.1(b)(6)(C).

14 **3. Acceptance of Responsibility:** Pursuant to U.S.S.G.  
15 § 3E1.1, the parties agree that the offense level should be reduced  
16 by three levels if the defendant, both in the guilty plea proceeding  
17 and in his dealings with the federal probation office, continues to  
18 be truthful and clearly demonstrate an affirmative acceptance of  
19 personal responsibility for the offenses committed.

20 **4. Departures:** Except as provided above in section  
21 III(C) with respect to a motion by the government for a reduction in  
22 sentence under U.S.S.G. § 5K1.1, the parties agree that no  
23 departures are warranted, and agree not to make any motion for  
24 departures.

## 25 VII.

### 26 WAIVERS

27 **A. Waiver of Constitutional Rights:** The defendant understands  
28 that by pleading guilty he waives the following constitutional

1 rights: (a) to plead not guilty and to persist in that plea if  
2 already made; (b) to be tried by a jury; (c) to be assisted at trial  
3 by an attorney who would be appointed at no cost or reduced cost to  
4 him in the event that he qualifies; (d) to subpoena, confront, and  
5 cross-examine witnesses against him; and (e) not to be compelled to  
6 incriminate himself.

7 **B. Waiver of Appeal and Collateral Attack:** The defendant  
8 understands that the law gives him a right to appeal his conviction  
9 and sentence. He agrees as part of his plea, however, to give up  
10 this right to appeal as long as, and to the extent that, his  
11 sentence is consistent with the stipulations set forth above about  
12 the sentencing guidelines variables. He specifically gives up his  
13 right to appeal any order of restitution the Court may impose.

14 The defendant also gives up any right he may have to bring a  
15 post-conviction attack on his conviction or his sentence. He  
16 specifically agrees not to file a motion under 28 U.S.C. § 2255 or  
17 § 2241 attacking his conviction or sentence.

18 If the defendant's conviction on any of the counts to which he  
19 is pleading is ever vacated at the defendant's request, or his  
20 sentence is ever reduced at his request, the government shall have  
21 the right (1) to prosecute the defendant on any of the counts to  
22 which he pleaded guilty; (2) to reinstate any counts that may be  
23 dismissed pursuant to this agreement; and (3) to file any new  
24 charges that would otherwise be barred by this agreement. The  
25 decision to pursue any or all of these options is solely in the  
26 discretion of the United States Attorney's Office. By signing this  
27 agreement, the defendant agrees to waive any objections, motions,  
28 and defenses he might have to the government's decision. In

1 particular, he agrees not to raise any objections based on the  
2 passage of time with respect to such counts including, but not  
3 limited to, any statutes of limitation or any objections based on  
4 the Speedy Trial Act or the Speedy Trial Clause of the Sixth  
5 Amendment.

6 **C. Waiver of Attorneys' Fees and Costs:** The defendant  
7 agrees to waive all rights under the "Hyde Amendment," Section 617,  
8 P.L. 105-119 (Nov. 26, 1997), to recover attorneys' fees or other  
9 litigation expenses in connection with the investigation and  
10 prosecution of all charges in the above-captioned matter and of any  
11 related allegations (including without limitation any charges to be  
12 dismissed pursuant to this Agreement and any charges previously  
13 dismissed).

#### 14 **VIII.**

#### 15 **ENTIRE PLEA AGREEMENT**

16 Other than this Plea Agreement, no agreement, understanding,  
17 promise, or condition between the government and the defendant  
18 exists, nor will such agreement, understanding, promise, or  
19 condition exist unless it is committed to writing and signed by the  
20 defendant, counsel for the defendant, and counsel for the  
21 government.

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IX.

APPROVALS AND SIGNATURES

**A. Defense Counsel:** I have read this Plea Agreement and have discussed it fully with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth in this Agreement.

DATED: April 17, 2001

\_\_\_\_\_  
JEFFREY A. SPRINGER  
Attorney for Defendant  
Scott Beach

**B. Defendant:** I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines which may apply to my case. No other promises or inducements have been made to me, other than those contained in this Agreement. In addition, no one has threatened or forced me in any way to enter into this Plea Agreement. Finally, I am satisfied with the representation of my attorney in this case.

DATED: April 17, 2001

\_\_\_\_\_  
SCOTT BEACH  
Defendant

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1           **C. Attorneys for the United States:** I accept and agree to  
2 this Plea Agreement on behalf of the government.

3 DATED: April 17, 2001

JOHN K. VINCENT  
United States Attorney  
Eastern District of California

6  
7 By: \_\_\_\_\_  
8 CHRISTOPHER P. SONDERBY  
MICHAEL J. MALECEK  
Assistant U.S. Attorneys

9  
10 RICHARD T. SPRIGGS  
11 United States Attorney  
District of Colorado

12  
13 By: \_\_\_\_\_  
14 THOMAS M. O'ROURKE  
Assistant U.S. Attorney



1 In 2000, defendant BEACH and Fetterman exchanged User IDs and  
2 passwords to allow each other to place fraudulent bids using each  
other's on-line aliases.

3 To induce other eBay users to deal with their aliases,  
4 defendant BEACH and his co-schemers repeatedly made bogus positive  
5 comments to the Feedback Profiles of their multiple User IDs on  
eBay, which allow users to measure the reliability of other users.

#### 6 Auction Summary

7 Defendant BEACH engaged in most of his selling activity under  
8 the User ID's boyscoutsofamerica and caritos. Between approximately  
9 October 1998 and May 2000, these User IDs hosted approximately 250  
10 auctions, with most involving artwork. Nearly half of these  
11 auctions involved the placement of fraudulent bids by the User IDs  
identified above to artificially inflate the price of these items.  
The final sale prices on these auctions ranged as high as \$10,400.  
Defendant BEACH also placed fraudulent bids on auctions hosted by  
Fetterman and Walton.

12 The total value of the highest winning bids in the auctions  
13 hosted by defendant BEACH in which fraudulent bids were placed, plus  
14 those auctions hosted by co-schemers in which defendant BEACH placed  
fraudulent bids, is between \$200,000 and \$350,000. The total value  
of the skill bids in those auctions is also between \$200,000 and  
\$350,000.

15 All of the fraudulent bids constituted misrepresentations that  
16 defendant BEACH and his co-schemers were legitimate and independent  
17 eBay users who intended, and were willing, to pay the amounts they  
18 bid on their own listings. By making these misrepresentations,  
defendant BEACH and his co-schemers intended to defraud other eBay  
users by causing them to place significantly higher bids for these  
listings than they would have absent the fraudulent bids.

#### 19 The "RD 52" Auction in May 2000

20 On April 28, 2000, Walton listed a painting "RD 52" for sale on  
21 eBay in a 10-day auction under his alias golfpoorly, which had  
22 little history in trading in art. During the course of the auction,  
23 more than 50 fraudulent bids were placed by the phony User IDs of  
defendant BEACH, Fetterman and Walton, in amounts ranging from 30  
cents to \$135,505. As a result of the scheme to defraud, an eBay  
user was induced to place a winning bid of approximately \$135,805 on  
the "RD 52."

#### 24 The "Califano" Auction in May 2000

25 On April 30, 2000, Fetterman listed a painting for sale on eBay  
26 under the User ID pogdog that he titled "LARGE OLD OIL PAINTING BY  
27 CALIFANO - HIS BEST." During the course of the auction, defendant  
BEACH and his co-schemers made approximately 18 fraudulent bids on  
the auction of the "Califano," ranging from \$360 to \$4,000. As a  
28 result of the scheme to defraud, an eBay user was induced to place a

1 winning bid of approximately \$4,520 on the "Califano."

2 The "Utrillo" Auction in March 2000

3 On March 21, 2000, defendant BEACH listed a painting for sale  
4 on eBay under the User ID boy scoutsofamerica titled "MOVING  
5 IMPRESSIONIST PAINTING OF A WINDMILL." Defendant BEACH posted a  
6 digital picture on eBay showing what appeared to be the name  
7 "Utrillo" on the painting. During the course of the auction  
8 defendant BEACH and his co-schemers made approximately 44 fraudulent  
9 bids on the auction of the "Utrillo" ranging from \$57 to \$4,999.  
10 The highest fraudulent bids in this auction were placed by the User  
ID utrillo@monocourrier.com, which Fetterman had created for the  
purpose of placing fraudulent bids on the "Utrillo." Fetterman  
inserted the surname "utrillo" in the User ID, and used an email  
provider with a French name to convey the false impression that a  
relative of Maurice Utrillo was bidding on the "Utrillo." As a  
result of the scheme to defraud, an eBay user was induced to place a  
winning bid of approximately \$6,100 on the "Utrillo."

11 The "Wendt" Auction in February 2000

12 On January 24, 2000, defendant BEACH listed a painting for sale  
13 on eBay under the User ID boy scoutsofamerica titled "Funky Old  
14 Purple Toned Impressionist Painting." A digital photo of the  
15 painting was placed on eBay which showed the signature of the  
renowned American painter William Wendt. The signature of Wendt had  
been forged on the painting as part of the scheme to defraud.

16 During the course of the auction, defendant BEACH and Fetterman  
17 made approximately 21 fraudulent bids on the auction of the "Wendt,"  
18 ranging from \$40 to \$1,025. As a result of the scheme to defraud,  
an eBay user was induced to place a winning bid of approximately  
\$10,400 on the "Wendt."

19 The "Dutch Oil" Auction in February 2000

20 On January 20, 2000, Fetterman listed a painting for sale on  
21 eBay under the User ID pogdog titled "Large Museum Exhibited 19C  
22 Dutch Oil Painting." During the course of the auction, defendant  
23 BEACH and his co-schemers made approximately 16 fraudulent bids,  
ranging from \$1,749 to \$6,888.88. As a result of the scheme to  
defraud, an eBay user was induced to place a winning bid of  
approximately \$8,600 for the "Dutch Oil."

24 The "Backhuysen" Auction in October 1998

25 On October 14, 1998, Fetterman listed a painting for sale on  
26 eBay in an auction under the User ID pogdog titled "Best Painting on  
27 Ebay - Orig.Backhuysen Oil." During the course of the auction,  
28 defendant BEACH made approximately four fraudulent bids ranging from  
\$5,000 to \$9,722. As a result of the scheme to defraud, an eBay  
user was induced to place a winning bid of approximately \$10,400 on  
this painting.



Use of Mails and Wires

On or about the dates set forth below, defendant BEACH furthered the scheme to defraud by causing or aiding and abetting the communications below, and by participating in the scheme under circumstances in which the communications involving his co-schemers Fetterman and Walton were foreseeable to defendant BEACH, as follows:

Count	Material Sent	Date	To	From
1	e-mail promoting sale of "RD 52"	5/8/00	eBay user in The Netherlands	WALTON in Sacramento
5	check for "Califano" sent via U.S. Postal Service	05/12/00	Lane Therrell P.O. Box 442 Placerville, CA 95667	eBay user in New York
6	check for "Dutch Oil" sent via U.S. Postal Service	02/01/00	Lane Therrell P.O. Box 442 Placerville, CA 95667	eBay user in New Jersey
10	check for "Backhuysen" sent via U.S. Postal Service	10/30/98	Lane Therrell P.O. Box 442 Placerville, CA 95667	eBay user in Pennsylvania